

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEROME TALLEY,

Plaintiff,

v.

SALLY OLSON,

Defendant.

CASE NO. 3:15-CV-05609-RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: OCTOBER 30, 2015

The District Court has referred this 42 U.S.C. §1983 civil rights action to the undersigned Magistrate Judge. The Court's authority for the referral is 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff Jerome Talley, a pretrial detainee being held at Kitsap County Jail, filed an application to proceed *in forma pauperis* (IFP) in this civil rights action on September 10, 2015. Dkt. 5. Plaintiff has over ten §1983 cases currently pending before this Court. On September 24, 2015, Senior District Judge Lonny R. Suko entered an order denying plaintiff's application to proceed IFP in *Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash.) because plaintiff incurred at least three "strikes" prior to initiating the lawsuit. Judge Suko also denied the applications to

1 proceed IFP in *Talley v. Congalton, et al.*, 3:15-cv-5534-LRS (W.D. Wash.) and *Talley v.*  
 2 *Creatura*, 3:15-cv-5585-LRS (W.D. Wash.) because plaintiff has incurred at least three “strikes.”

3 Concurring with Judge Suko, this Court finds that plaintiff incurred the following  
 4 “strikes” prior to filing this lawsuit: *Talley v. Hlevinski* (E.D. Wash. Case No. 02:99-cv-5036);  
 5 *Talley v. Bailey, et al.* (W.D. Wash. Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)*  
 6 (W.D. Wash. Case No. 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash. Case No. 2:08-  
 7 cv-01761-TSZ). *See also Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash.). This Court  
 8 may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson Rancheria*  
 9 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

#### 10 DISCUSSION

11 Because plaintiff has incurred at least three strikes, he may not proceed IFP unless he can  
 12 show he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The  
 13 imminent danger exception requires a prisoner allege a danger which is “ready to take place” or  
 14 “hanging threateningly over one’s head.” *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir.  
 15 2007). In this case, plaintiff sues Sally Olson, a Washington Superior Court Judge, alleging that  
 16 he is being “taken, imprisoned, outlawed, destroyed, as a freeman of his rights to a judgment or  
 17 verdict of his peers or jury of twelve men of the State by defendant for an alleged ‘crime’ or ‘act’  
 18 committed.” Dkt. 1 at 4.

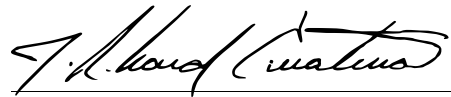
19 Plaintiff does not allege danger of any physical injury, much less an imminent serious  
 20 physical danger which is “ready to take place” or “hanging threateningly over [his] head.”  
 21 *Cervantes*, 493 F.3d at 1056. Therefore, this Court concludes that plaintiff is not in imminent  
 22 danger in this case, and therefore, plaintiff is subject to the three-strikes rule, and should not  
 23 proceed *in forma pauperis*.  
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1  
2 **CONCLUSION**

3 The Court recommends plaintiff's motion to proceed IFP (Dkt. 5) be denied. The Court  
4 further recommends plaintiff be ordered to pay the \$400.00 filing fee within thirty days of the  
5 District Court's order and, if the fee is not paid, dismiss this case without prejudice.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
7 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
8 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
9 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time  
10 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October**  
11 **30, 2015**, as noted in the caption.

12 Dated this 6th day of October, 2015.

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15 J. Richard Creatura  
16 United States Magistrate Judge  
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